IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1) C.W.P. No. 19676 of 2005

Jaswant Singh and others.

..... Petitioners

Versus

The State of Haryana and others.

..... Respondents

(2) C.W.P. No. 10690 of 2005

Lachhman and others.

..... Petitioners

Versus

The State of Haryana and others.

..... Respondents

(3) C.W.P. No. 13404 of 2005

Phul Singh and others.

..... Petitioners

Versus

The State of Haryana and others.

..... Respondents

(4) C.W.P. No. 16212 of 2005

Satish Kumar and others.

..... Petitioners

Versus

The State of Haryana and others.

..... Respondents

(5) C.W.P. No. 17031 of 2005

Ramesh and others.

..... Petitioners

Versus

The State of Haryana and others.

..... Respondents

(6) C.W.P. No. 19741 of 2005

Balbir Singh and others.

..... Petitioners

Versus

The State of Haryana and others.

..... Respondents

(7) C.W.P. No. 19820 of 2005

Jasmer @ Banga and others.

..... Petitioners

Versus

The State of Haryana and others.

..... Respondents

(8) C.W.P. No. 1429 of 2006

Pritam Singh and others.

..... Petitioners

Versus

The State of Haryana and others.

..... Respondents

(9) C.W.P. No. 1472 of 2006

Binder Singh and others.

..... Petitioners

Versus

The State of Haryana and others.

..... Respondents

(10) C.W.P. No. 8352 of 2006

Kabal Singh and others.

..... Petitioners

Versus

State of Haryana and others.

..... Respondents

(11) C.W.P. No. 9297 of 2006

Jangir Ram.

..... Petitioner

Versus

State of Haryana and others.

..... Respondents

(12) C.W.P. No. 11452 of 2006

Amarjot Singh Punnia and others.

..... Petitioner

Versus

State of Haryana and others.

..... Respondents

(13) C.W.P. No. 13202 of 2006

Banta Ram and others.

..... Petitioners

Versus

State of Haryana and others.

..... Respondents

(14) C.W.P. No. 13691 of 2006

Gram Panchayat, Bibipur and others.

..... Petitioners

Versus

The State of Haryana and others.

..... Respondents

(15) C.W.P. No. 16828 of 2006

Bhupinder Singh.

..... Petitioner

Versus

The State of Haryana and others.

..... Respondents

Date of decision : 23.7.2007

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

Present: Shri A.K.Chopra, Senior Advocate assisted by Shri Harminder Singh, Advocate; Shri M.S.Khaira, Senior Advocate assisted by Shri Dharmender Singh; Shri Ashok Aggarwal, Senior Advocate assisted by Shri Piyush Bansal, Advocate; Shri K.S. Sidhu, Senior Advocate assisted by Shri Vikrant Oberoi, Advocat, and Sarv Shri R.S.Tacoria, J.L.Malhotra, Rajinder Nain, Rajnish Gupta, Advocates for the petitioners.

....

Shri H.S.Hooda, Advocate General, Haryana assisted by Shri Hem Raj Mittal,Advocate; Shri M.L.Sagar and Shri Randhir Singh, Additional Advocates General, Haryana for the State and other official functionaries.

Mrs.Daya Chaudhary, Assistant Solicitor General of India assisted by Shri Vir Bhan Singla and Mrs.Kamla Malik, Advocates for Union of India and the Central Water Commission.

Shri Anmol Rattan Singh, Additional Advocate General, Punjab for the State.

Shri D.S.Nehra, Senior Advocate assisted by Shri N.S.Bawa and Ms.Amandeep Kaur, Advocates for Bhakra Beas Management Board.

Shri R.L.Batta, Senior Advocate assisted by Ms.Geeta Sharma, Advocate for the State of Rajasthan.

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

....

VIJENDER JAIN, CHIEF JUSTICE

This judgment of ours will dispose of the above mentioned writ petitions as common questions of law and facts are involved therein.

The Government of Haryana took a decision to construct a canal to be called “Hansi - Butana Canal” with a view to take waters to the parched areas of the State and initiated steps to achieve the aforesaid objective which was sought to be stone-walled by a spate of writ petitions challenging its action on various grounds which we propose to delineate and discuss in the course of search for an answer to the controversy raised in

the said petitions.

C.W.P.No.13404 of 2005 – Phul Singh and others Versus State of Haryana and others became the fountain-head petition from which other writ petitions flowed.

This writ petition coupled with C.W.P.No.16212 of 2005- Satish Kumar & others Versus State of Haryana & others; C.W.P.No.19676 of 2005- Jaswant Singh and others Versus State of Haryana and others, and C.W.P. No. 13691 of 2006- Gram Panchayat, Bibipur and others Versus The State of Haryana and others, particularly, encompass in their folds the entire gamut of the controversy. While the rest of the petitions are merely clones of these writ petitions broadly reiterating the controversy in the same terms.

Therefore, we deem it appropriate to extricate the facts and the essential challenge made to the action of the State of Haryana in the aforesaid writ petitions.

C.W.P.No.13404 of 2005

In this petition, Phul Singh and others, by invoking the jurisdiction of this Court under Articles 226/227 of the Constitution of India, have prayed for issuance of a writ in the nature of mandamus directing the respondents therein not to take the canal which is proposed to be constructed from village Azimgarh, Tehsil Guhla, District Kaithal to village Aanta, Tehsil Safidon, District Jind through the villages Ramgarh Rorh, Tehsil Pehowa, District Kurukshetra and at a distance of less than one acre from the village abadi.

The principal challenge to the action of the State is that the

scheme for digging the canal has not been published in accordance with law and its path has not been finalised by resorting to a proper survey and that no public notice has been issued to the persons, who are likely to be affected adversely.

The non-publication of the scheme has been said to be against the provisions of the Haryana Canal and Drainage Act,1974 (for short, `the 1974 Act'). Even though, such a plea was not pleaded in as many words in the writ petition, yet, being a question of law, it has been vehemently put forward by the learned counsel for the petitioners during the course of arguments.

It is also necessary to notice here that this writ petition was filed on 22.8.2005 and the first order passed by this Court was on 29.8.2005 noticing the contention of the counsel for the petitioners that the draft scheme was never published in accordance with the rules as neither the notice had been served upon the petitioners by affixing it at a conspicuous place in the village nor the villagers of village Ramgarh Rorh, who are vitally affected by laying down of the canal were granted opportunity of hearing.

C.W.P.No.16212 of 2005

This writ petition was alleged to have been necessitated because after filing of the writ petition by Phul Singh etc., the State of Haryana and its functionaries had initiated the process of acquisition of land by issuing notifications dated 18.8.2005/23.8.2005 under Section 4 read with clause (C) of sub-section (2) of Section 17 of the Land Acquisition Act,1894 (hereinafter described as `the `1894 Act') and dated 13.9.2005

under Section 6 of the 1894 Act, invoking the urgency provisions to acquire the lands of the petitioners for the purpose of constructing the canal. The petitioners have prayed for issuance of a writ in the nature of certiorari quashing notifications dated 18.8.2005/23.8.2005 and 13.9.2005 on the grounds that (i) the entire acquisition is the result of mala fide action on the part of the Chief Minister, Haryana, who wanted to cater to his constituency, the relevant portion of the averments is extracted below:-

> "The canal in question which is sought to be carved out would not be serving any purpose of irrigation and/ or would not be of any help otherwise to the villagers of the villages falling on its way. In fact, the entire exercise is being undertaken by the respondents just to take the Bhakra water to the constituency of the present Chief Minister of the State of Haryana, in District Rohtak. In the humble submission of the petitioners, the scheme of carving out the proposed canal at public expense is not only motivated for selfish cause but is flagrant abuse of the resources and as such is opposed to the public purpose";

(ii) that the invocation of the urgency provisions is mala fide and is not borne out from the records;

(iii) that by the aforesaid invocation of the emergency provisions depriving the petitioners of their right to file objections under Section 5-A of the 1894 Act is arbitrary and hence, the entire exercise stands vitiated;

(iv) that no conscious decision was taken by the State to dispense with the filing of objections under Section 5-A of the 1894 Act after

concluding that an urgency existed.

(v) that the publication of the notifications has not been carried out in accordance with law;

(vi) that the purpose of the acquisition has not been brought out in the notifications which are vague;

(vii)that the acquisition is not for a public purpose.

C.W.P.No.17031 of 2005

In this writ petition, apart from the over-laping plea of challenge to the acquisition on account of the urgency provisions having been invoked in a mala fide manner, re-alignment of the channel sought to be made was also brought under the scanner of this Court by the petitioners by saying that their land has been rendered useless and hopelessly fragmented.

C.W.P.No.11452 of 2006

This writ petition has been filed by one Amarjot Singh Punnia particularly assailing the construction of the canal on the ground of technical feasibility and other grounds which are similar to the grounds taken in C.W.P.No.19676 of 2005.

It is also to be noticed here that this writ petition was filed subsequent to the filing of C.W.P.No.11095 of 2006 filed by Gurbant Singh Punnia, father of Amarjot Singh Punnia, which was disposed of by this Court on 17.5.2007 with the following observations:-

> "We cannot go into the question about the technical feasibility of providing syphons between village Chabha and Daba as that is in the domain of the experts. However, in view of the

assurance given by the respondents as noticed above, we direct the respondents to ensure that the aforesaid assurance is carried out in letter and spirit and that all efforts be taken so as to ensure that no flooding is caused in the said villages."

C.W.P.No.13691 of 2006

This writ petition has been preferred by a number of petitioners and the sole challenge made by them to the action of the State of Haryana is that prior clearance from the Central Government was not taken in accordance with the provisions of the Environment Protection Act,1986. Specific reliance has been placed on notification dated 27.1.1994 in support of this assertion to say that prior permission not having been taken would not only render the entire action of the State bad in the eyes of law, but would also render them liable to criminal prosecution.

C.W.P.No.19676 of 2005

In this petition, the petitioners have tried to don colours of a public interest litigation and have prayed for issuance of a writ in the nature of certiorari "quashing the scheme/ decision and the notifications dated 18.8.2005/23.8.2005 and 13.9.2005 (Annexures P6 and P7 with the writ petition)".

In short, apart from the challenges which have been made in C.W.P.Nos. 11452 and 13691 of 2006, having been reflected in this petition, the additional grounds taken by the petitioners are as under:-

(1)The construction of the canal is not feasible as the Bhakra Canal for irrigation purpose has already been linked to Yamuna Canal to carry the water of Bhakra Canal to

Yamuna Canal. The canal in question is proposed to originate from the Main Bhakra Canal at RD 340300-L near Azimgarh village and more water is proposed to be carried out to Hansi Branch and Butana Branch near Aanta village. Apart from this, the canal would cross 9 main drains and the water would flow from west to east in the opposite direction which is likely to increase the floods in the State.

(2) The Satluj Yamuna Link Canal has already been constructed at the cost of Rs.800 Crores and this canal, therefore, will not serve any purpose.

(3) A slope gradient of .12 per 1000 ft. is required to be provided in a canal whereas in the canal in question the said gradient is kept at .05 per 1000 ft. which is the lowest in the State and with such a low slope the velocity would be very low and the flow of water would be at a negligible speed.

(4) The technical aspect of the canal was also stated to be faulty on number of counts.

(5) Every scheme of the Irrigation Department has been financed by NABARD. In the current budget, an amount of Rs.75 Crores has been sanctioned whereas the proposed canal is stated to be costing more than Rs.750 Crores.

(6) No environmental clearance has been taken from the Central Government.

(7) No permission from the Central Water Commission has been taken.

(8) No permission has been taken from the Railway Department before finalising the scheme.

(9) No notice or opportunity of hearing has been given to the petitioners, who are likely to be affected by the scheme/ decision to carve out the canal.

(10) There is a political angle to the construction of the canal.

(11) The permission of the Pollution Department of the State has not been taken.

(12) The entire acquisition and resorting to the emergency provisions is a mala fide action.

Even though, this petition was filed as a public interest litigation, yet, at the time of motion hearing on 19.12.2005, learned counsel for the petitioners categorically stated that the petition had been wrongly styled as public interest litigation and the error be rectified and it be heard along with C.W.P.No.13404 of 2005, which was stated to be pending.

During the course of proceedings of this petition, an application was moved by the petitioners to implead Bhakra Beas Management Board, Union of India, State of Punjab, State of Rajasthan and Central Water Commission and this Court had permitted the said parties to be impleaded as respondents vide order dated 21.2.2006, the relevant and operative part of which is reproduced below:-

> "We are of the considered opinion that the State of Haryana has itself referred the matter for opinion/ permission of BBMB for utilisation of the drop available on BML to examine the power generation potential for the benefit of the State of Haryana.

....

Even when there would be no consumption of water from BML but the advantage is to be taken of the drop for rotating the turbine, the sanction of BBMB is being asked for in principle. The matter which is pending before us, the State of Haryana is proposing to have an off take from BML, which prima facie looks to be tinkering with the interest of parties, which are primarily connected with the BML directly or indirectly. Thus, we are of the considered opinion that the parties mentioned in para 3 of the application, i.e., (a) Bhakra Beas Management Board, Sector 19-B, Madhya Marg, Chandigarh through its Secretary; (b) the State of Punjab through the Principal Secretary to the Government of Punjab, Irrigation Department, Punjab Mini Secretariat, Sector-9, Chandigarh; © The State of Rajasthan through the Secretary to Government of Rajasthan, Irrigation Department, Rajasthan Sachivalaya, Jaipur; (d) Union of India through the Secretary to Government of India, Ministry of Water Resources, Sharam Shakti Bhawan, Rafi Marg, New Delhi; and (e) Central Water Commission, Sewa Bhawan R.K.Puram, New Delhi through its Chairman, would be proper parties if not necessary parties. Resultantly, the application is allowed and the aforestated are ordered to be impleaded as respondents. Registry is directed to carry out necessary corrections in the memo of parties."

As a direct fall-out of the aforesaid order, the petitioners moved an application under Order 6 Rule 17 of the C.P.C. seeking to amend the

writ petition, which was disallowed vide order dated 18.5.2006, the relevant extracts of which are as under:-

> "In the original petition the petitioners had only sought to challenge the feasibility and viability of the project and the scheme of the acquisition proceedings being mala fide and not in public interest. The amendments which the petitioners now seek to incorporate a completely new twist to the controversy. A new case is now sought to be set up in which the rights of the affected States, the impact of the Bhakra Nangal Agreement, the effect of the Punjab Reorganization Act,1956, rights of the parties under the Bhakra Nangal Agreement as also water sharing between the affected States is sought to be raked up by way of these amendments.
>
> What seemed to be a petition of a simple concern of small landowners regarding the acquisition of their lands has suddenly threatened to turn into a monster problem of multi-headed dimensions which encroaches upon the rights of the States and the sharing of waters by those States.
>
> xx xx xx xx xx xx xx xx xx
>
> Although prima facie we feel that the amendments that the petitioners wish to incorporate does raise questions of inter-State disputes but we are refraining from commenting upon our jurisdiction to entertain such a question for the simple reason that one has to cross the bridge when one comes to it. We could have adjudicated on the question of jurisdiction only after the

decision of the application for amendment of the pleadings."

In so far as other writ petitions are concerned, they contain more or less the same grounds of challenge and, therefore, we do not feel it necessary to extract the averments of the petitioners in detail.

The State of Haryana, on its part while appearing as respondent in the writ petitions, has categorically denied the averments made in the writ petitions. It has been averred that the action for digging the canal is not mala fide. Rather, the necessity for constructing the canal has been demonstrated by stating that it will cater to the needs of Southern Haryana and the water will be carried to Delhi as well. The acquisition was sought to be defended by showing the urgency for construction of the canal and by showing the compliance of the relevant provisions of law. The feasibility of the canal on technical grounds was also defended.

In response to C.W.P.No.17031 of 2005, the State of Haryana produced sketch plan showing the alignment of the canal, proposed as well as actual and also pleaded that thousands of feet in terms of length has been saved on account of re-alignment.

While responding to C.W.P. No.13691 of 2006, besides controverting other averments of the petitioners, the State of Haryana specifically stated that necessary clearance from the Ministry of Environment and Forests has been taken.

Having, thus, extricated the controversy from its deep mires and having particularly delineated the contours of the same, we now propose to examine the contentions raised by the learned counsel for the parties.

....

Shri A.K.Chopra, learned Senior Advocate appearing for some of the petitioners, contended that the action of the State of Haryana to carry out the construction of the canal in question is contrary to the provisions of the 1974 Act as the scheme for doing so was never prepared and published in compliance of Sections 17 and 18 thereof. He further contended that the acquisition of land of the petitioners by resorting to the emergency provisions was a colourable exercise of power and that no proper procedure regarding publication of the notifications was followed. Besides, the public purpose so stated in the notifications can hardly be termed to be a public purpose and even if, it is assumed that it is a public purpose, the same stands already served with the existence of Satluj Yamuna Link Canal. He argued that there was no urgency in the project which could justify the acquisition on emergent basis. Learned counsel contended that Section 5-A of the 1894 Act is akin to fundamental right and it cannot be dealt with so lightly so as to warrant it being dispensed with by resorting to the provisions of Section 17. Lastly, learned counsel urged that no permission from the Central Government, Central Water Commission, Railway authorities and other such affected authorities, as also the environmental clearance, was taken before initiating the process. In support of his contentions, learned counsel placed reliance on the following judgments:-

(i) Narayan Govind Gavate etc. Versus State of Maharajsthra and others, AIR 1977 S.C. 183.

(ii) The State of Punjab and another Versus Gurdial Singh and others, AIR 1980 S.C. 319.

(iii) Uday Kaushisk Versus The Land Acquisition Collector and

others, AIR 1988 Delhi 101.

(iv)Gurdev Singh and others Versus State of Punjab and others, 1995 P.L.J. 432.

(v) Deepak Bhardwaj and others Versus Union of India and others, 2001(2) L.A.C.C. 482.

(vi)Union of India and others Versus Mukesh Hans, 2004(8) S.C.C. 14.

(vii)Hindustan Petroleum Corp.Ltd. Versus Darius Shapur Chenai and others, 2005(7) S.C.C. 627.

Learned counsel for the petitioners in C.W.P.No.13691 of 2006 also contended that the project of this nature necessarily involves the clearance from the Central Government and that the construction of the canal is likely to cause a serious hazard to the entire environment in the region.

Learned counsel appearing for other petitioners adopted the arguments advanced before us and noticed hereinabove.

The contentions of the learned counsel for the petitioners were stoutly resisted by Shri H.S.Hooda, learned Advocate General, Haryana appearing for the State and its functionaries. He contended that the petitioners are guilty of concealment of facts as C.W.P.No.13404 of 2005 was filed challenging only the non-publication of the scheme. The said writ petition was filed on 22.8.2005 when the notification under Section 4 of the 1894 Act had already been published in the official gazette on 18.8.2005. The factum of acquisition was known to the petitioners, which can be inferred from the averments made in para 6 of that writ petition where they

talk about the impending acquisition by averring that "while issuing notification under Section 4 of the Land Acquisition Act,1894, approximately three acres of land at that point would be notified." In any eventuality, the notification having been published was in the knowledge of the petitioners and further the writ petition came up for hearing for the first time before this Court on 29.8.2005 and by that time, the publication of the notification under Section 4 of the 1894 Act had already been made on 18.8.2005/23.8.2005 in two leading newspapers, i.e., The Indian Express and The Daily Tribune and the contents of the notification had also been affixed in the local affected area and munadi also done as a measure of compliance of the requirement of law. The factum of acquisition being known to them and the same having not been challenged in the first instance when C.W.P.No.13404 of 2005 was filed, the petitioners in the subsequent writ petition, i.e., C.W.P.No.16212 of 2005 in which Phul Singh is also a petitioner (and in fact, all the petitioners were the same), were precluded from laying a challenge to the notifications. The petitioners could have amended the first writ petition, but could not have filed a second writ petition.

It was then pointed out by the learned Advocate General that from amongst all the petitioners in the aforesaid three writ petitions, except one Pritam Singh son of Hardev Singh, have accepted the compensation and have, thus, acquiesced to the acquisition. In C.W.P.No.19676 of 2005, eight of the nine petitioners have already accepted the compensation, whereas the sole petitioner in C.W.P.No.9297 of 2006 has also received the compensation for his acquired land. Thus, they have no right to challenge

the acquisition. He also pointed out that C.W.P.No.19820 of 2005 was originally filed by forty six petitioners, but vide order dated 22.8.2006, this petition stood dismissed qua thirty eight of them as they had already received the compensation as awarded by the Land Acquisition Collector and now it survives only qua petitioner nos. 6, 7, 20, 22, 23, 32, 45 and 46. That apart, the possession has since been taken, the digging work and brick lining is complete and the entire project is likely to be completed very shortly.

It was next contended by the learned Advocate General for the State of Haryana that the allegations of mala fide are wild and vague and the Court should take a serious view of the same as the allegations have been made recklessly without impleading the Chief Minister as a party to the proceedings and that the canal was made for the entire State and not for the constituency of the Chief Minister as alleged.

Further refuting the contentions raised by the learned counsel for the petitioners, it was contended that the publication of the notifications was done in two leading newspapers, besides being published in the official gazette. That apart, the same were widely publicized by carrying out munadi in the local area.

Further, the urgency provisions which were invoked, were sought to be justified by contending that the State of Haryana had taken a policy decision to construct the canal and as such, the same was beyond the pale of challenge in a Court of law unless it is shown that proper procedure has not been followed or that an arbitrary process has been adopted while formulating the policy. It was extremely urgent to carry out the project as

the southern areas of the State were starving of water and the areas such as Gurgaon and Delhi were needing water on emergent basis, otherwise the entire infra-structure was threatened.

The contention that the canal was not technically feasible was also sought to be refuted by stating that it is apparent that the petitioners were motivated as a simple farmer would hardly be expected to know such hyper-technical aspects of the canal. It was contended that the project had been undertaken after taking into consideration all the aspects of the matter by the competent technical minds and even the cost of the canal which has been exorbitantly shown to be Rs.750 Crores is wrong, but certainly the State has suffered a loss of Rs.100 Crores by way of escalation of the cost on account of delay caused by the filing and pendency of the writ petitions. The actual cost of the project is Rs.259 Crores (now revised to Rs.350 Crores).

In reply to the contention of the learned counsel for the petitioners in C.W.P.No.13691 of 2006, learned Advocate General contended that in June,2006, the State had applied for necessary permission/ clearance and that the project has been cleared in principle by the Ministry of Environment and Forests.

To support his contentions, learned counsel for the State of Haryana placed reliance on the following judgments:-

1. Narinjan Singh Versus The State of Punjab and another, 1985 P.L.J. 215.
2. State of U.P.Versus Smt.Pista Devi and others, 1986(4) S.C.C. 251.

3. Haryana Urbana Development Authority and another Versus Roochira Ceramics and another, 1996(6) S.C.C. 584.
4. Bihar State Electricity Board and another Versus Usha Martin Industries and another, 1997(5) S.C.C. 289.
5. Municipal Council, Ahmednagar and another Versus Shah Hyder Beig and others, AIR 2000 S.C. 671.
6. Narmada Bachao Andolan Versus Union of India and others, 2000(10) S.C.C. 664.
7. First Land Acquisition Collector and others Versus Nirodhi Prakash Gangoli and another, AIR 2002 S.C. 1314.
8. Ashok Kumar and others Versus State of Haryana and others, 2004(1) P.L.R. 830.

We have thoughtfully considered the respective contentions of the learned counsel for the parties and have gone through the whole record.

Sections 2(1), 17, 18 and 19 of the Haryana Canal and Drainage Act,1974, which are relevant for the decision of these writ petitions, read as under:-

"2.DEFINITIONS.- In this Act, unless there is anything repugnant in the subject of contest:-

(1)"Canal" includes-

(a) all canals, channels and reservoirs constructed, maintained or controlled by the State Government for the supply of water;

(b) all works, embankments, structures, including outlets, supply and escape channels connected with such canals,

channels or reservoir;

© all watercourses;

(d) all parts of a river, stream, lake or natural collection of water or natural drainage channels, to which the State Government has applied the provisions of Part II of this Act;

(e) all field drains;

(f) all State tubewells;

(g) all drainages, works, embankments and structures, connected with drains maintained or controlled by the State Government;

xx xx xx xx xx xx xx xx xx

17. PREPARATION OF DRAFT SCHEME**:-** Notwithstanding anything contained to the contrary in this Act but subject to the rules prescribed, Divisional Canal Officer may, on his own motion or on the application of a shareholder, prepare a draft scheme to provide for all or any of the matters,namely:-

(a) The construction, alteration, extension and alignment of any water-course or realignment of any existing watercourse;

(b) allotment of any new areas to a watercourse or an outlet or allotment of area served by one watercourse to another or from one outlet to another or for exclusion of an area, from an outlet or a watercourse;

© construction of a new outlet, shifting or modification of an existing outlet.

Explanation:- Any change in the design or size or both of an

outlet, whose design or size or both have been changed in an unauthorised manner for restoring the same to its authorised discharge shall not be deemed to be a modification;

(d)the lining of any watercourse;

(e) the occupation of land for the deposit of soil from watercourse clearances;

(f) any other matter which is necessary for the proper maintenance and distribution of supply of water from a watercourse or an outlet.

(2)Every scheme prepared under sub-section (1) shall, amongst other matters, set out the estimated cost thereof, the alignment of the proposed water-course, or re-alingment of the existing watercourse as the case may be, the site of the outlet, the particulars of the shareholder to be benefitted and a sketch plan of the areas proposed to be covered by the scheme.

18. PUBLICATION OF SCHEME:- (1) Every scheme shall as soon as may be after its preparation, be published in such form and manner as may be prescribed for inviting objections and suggestion in respect thereof within twenty-one days of its publication.

(2) After considering such objections and suggestions, if any, the Divisional Canal Officer shall approve modify or reject the scheme within thirty days of the time for the receipt of such objections and suggestions unless this period is

extended by the Superintending Canal Officer for good and sufficient reasons:-

Provided that in the following cases, the prior approval of the Chief Canal Officer shall be obtained for allowing:-

(a) a new outlet on a main canal or branch canal;

(b) an outlet with discharge of less than 0.75 cusec.

19. PUBLICATION OF SCHEME AFTER APPROVAL-(1) The Divisional Canal Officer shall as soon as may be, publish the fact of rejection of scheme or the particulars of the scheme approved or modified by him under sub-section (2) of section 18 in the prescribed manner and call upon the shareholders to implement it at their own cost within the period to be specified by him and if the shareholders fail to implement the same he shall undertake the construction or implementation of the scheme himself, and recover the cost thereof from the shareholders in the manner and period to be specified by him. Any sum which remains unpaid, within the specified period for this purpose, may be recovered by the Collector from the defaulting person as arrears of land revenue.

(2) Any officer, now below the rank of Sub-Divisional Canal Officer shall check the implementation of scheme at site."

Section 17 of the Land Acquisition Act,1894, the provisions of which have been invoked by the State of Haryana for acquiring the land for construction of the canal in question, is also extracted below:-

“17. Special powers in cases of urgency.- (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2)Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without

giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso

thereto), shall apply as they apply to the payment of compensation under that section.

(3B) The amount paid or deposited under sub-section (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification under section 4, sub-section (1)."

In the first instance, we would like to observe here that a closer examination of the writ petitions and the relevant material and pleadings which have come on record pursuant to the order dated 21.2.2006 permitting Bhakra Beas Management Board etc. to be impleaded as parties, reveals that the controversy has been unnecessarily amplified in magnitude as the simple concern of a farmer for acquisition of his land has turned into a hydra-headed monster problem with inter-State ramifications. We are

clearly of the view that only the propositions as raised in the writ petitions need to be answered and the endeavour of the petitioners to prod the Court to enter the realm of controversy not pleaded originally and which came into existence by way of ancillary material has to be thwarted and negated.

For the said reason, this Court, on 18.5.2006, had negatived the plea of the petitioners to amend C.W.P.No.19676 of 2005. The relevant observations have already been reproduced in the earlier part of the judgment.

After having observed as such, we now venture to answer the questions and the challenge raised in the writ petitions.

The first challenge to the action of the State of Haryana is on the ground that digging of canal was not preceded by a scheme and even if the scheme was there, the same was not published in accordance with the provisions of Sections 17 and 18 of the 1974 Act.

We are afraid, the aforesaid challenge has to be noticed only to be rejected. Section 17 of the 1974 Act only talks of the preparation of the scheme for the construction, alteration, extension and alignment of any watercourse or re-alignment of any existing watercourse or for allotment of a new area for watercourse or for an outlet or re-allotment of an area served by one watercourse to another or for construction of a new outlet etc. including the laying of a watercourse. It is this draft scheme for achieving the stipulated purpose stated in Section 17 that the publication has to be resorted to as a measure of compliance of Section 18. As noticed above, `Canal' has been defined in Section 2(1) of the 1974 Act. A conjoint reading of the provisions of Sections 2(1), 17, 18 and 19 of the 1974 Act clearly

reveals that the preparation of a draft scheme and publication thereof is envisaged if the sub-component of a canal, i.e., watercourses which essentially means a channel and outlets are to be constructed, maintained or altered. There is no requirement in these provisions which would require that such an exercise has to be undertaken in case of construction of a canal. Consequently, we do not find any merit in the challenge of the petitioners on this score and reject the same.

The plea of mala fides also deserves to be rejected as neither the Chief Minister against whom the allegations have been made, has been impleaded as a party nor has any material been shown to substantiate the fact that the canal is being constructed only to benefit his constituency. The canal is said to have a length of more than 110 Kms. requiring acquisition of about 2000 acres of land and will be travelling in the four districts, namely, Kaithal, Kurukshetra, Karnal and Jind. All the writ petitioners are concentrated in an area of just 8 Kms. belonging to District Kaithal. There is not a whimper from any of the rest of the affected districts. The contention of the petitioners is, therefore, belied from the above facts.

The challenge to the acquisition has been made primarily on the following grounds:-

(a) There has been no proper publication of the notifications.

(b) The acquisition is result of colourable exercise of power.

(c) There was no urgency to justify the invocation of provisions of Section 17 of the 1894 Act.

(d)The public purpose is vague and non-existent.

(e) The denial of opportunity of hearing objections under

Section 5A of the 1894 Act has vitiated the entire acquisition proceedings.

(g) No conscious decision was taken before dispensing with the objections under Section 5-A of the 1894 Act.

A perusal of the record in the back-drop of the aforesaid contentions reveals that the grounds raised for challenging the acquisition are unfounded.

On 18.8.2005, a publication was done in the official gazette followed by a publication in two newspapers, namely, The Indian Express dated 25.8.2005 and The Dainik Tribune dated 24.8.2005. The substance of the notification was also published by beat of drums in the vicinity on 24th and 25th August,2005 which is established from the entries made at S.Nos. 501 and 438 of the Rapat Roznamacha. We are satisfied that the intent and the content of the notifications were duly published in accordance with law.

To contend that the invocation of urgency provisions thereby depriving the petitioners of the right to file objections under Section 5-A of the 1894 Act was unwarranted, learned counsel for the petitioners had relied upon the observations of the Supreme Court in Narayan Gobind Davate's case (supra) and Gurdial Singh' case (supra).

In the first case, their Lordships observed as under:-

"All schemes relating to development of industrial and residential areas must be urgent in the context of the country's need for increased production and more residential accommodation. Yet, the very nature of such schemes of development does not appear to demand such emergent action

as to eliminate summary enquiries under Section 5-A of the Act."

In the second case, the observations made by the Apex Court and relied upon by the learned counsel for the petitioners, read as under:-

"It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing, land acquisition authorities should not having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes travesty of emergency power."

An attempt was also made that no such real urgency existed which could warrant enquiry under Section 5-A of the 1894 Act to be dispensed with, especially in view of the fact that considerable delay had been caused by the State itself. Reliance was placed on the judgments of the Supreme Court in Mukesh Hans's case (supra) and of this Court in Gurdev Singh's case (supra).

Their Lordships of the Apex Court in Mukesh Hans's case observed as under:-

"A careful perusal of this provision which is an exception to

the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency under Section 17 (1) or unforeseen emergency under Section 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with."

The observations made by a Co-ordinate Bench of this Court in Gurdev Singh's case are reproduced below:-

"An examination of the facts of this case in the light of the principles of law enunciated by the Supreme Court and by this Court leads to the conclusion that the Government has invoked the provisions of Section 17(2)(C) for acquisition of land

without there being a real urgency. No material has been placed by the respondents on the record of the case to show that the need of setting up of a Government polytechnic at Mansa Kalan was of such that it could not brook delay for few months. A mere statement in the notification or in the reply to the writ petition that the construction of the building is to be started immediately so as to meet the time bound construction schedule is not sufficient to answer the challenge that the acquisition was not of such a nature that even a summary enquiry under Section 5-A of the Act should be dispensed with. Neither Annexure R-1 nor Annexure R-2 gives any indication of such urgency. Therefore, mere issue of notification by invoking the provisions of Section 17(4) of the Act is not sufficient to prove that the enquiry under Section 5-A was not warranted."

After considering the contentions of the learned counsel for the petitioners and perusing the record, we are of the opinion that the same are seemingly misplaced.

It has been brought out by way of pleadings and the consequent record produced before us by the State of Haryana that it receives surface water from two sources, i.e., from Bhakra Canal System and Yamuna Canal System. In so far as Bhakra Canal System is concerned, it is fed by rivers Sutlej, Ravi and Beas stored at Bhakra Dam, Ranjit Sagar Dam and Pong Dam, respectively, which are linked in the State of Punjab itself, from which the water flows in the State of Haryana at contact points of Bhakra

Main Line and Narwana Branch. Out of twenty districts in the State of Haryana, only Panchkula and Yamuna Nagar are not dependent on canal water for irrigation. Out of the remaining 18 districts, irrigation water is supplied through canal system. Sirsa and Fatehabad districts are supplied water on 16 days out of 24 days, whereas in parts of Hisar and Jind districts, the supply is on 16 days out of 32 days. The remaining districts get water supply on 8 days out of 32 days and sometimes, it is on 8 days out of 40 days. Besides, cultivable command area of Yamuna Canal system is 1.084 million hectares, while irrigated area is 0.838 million hectares. The cultivable command area of the Bhakra Canal System is 1.189 million hectares while irrigated area is 1.247 million hectares. As against this, cultivable command area of the Lift Canal System in the State of Haryana is 0.460 million hectares out of which the irrigated area is 0.070 milion hectares, meaning thereby the area covered by the Lift Canal is much lesser vis-a-vis the area covered by other Canal Systems. In view of this, the need of water in the State is immense. That apart, the state is also supplying water to State of Delhi from the water of river Yamuna in accordance with the Memorandum of Understanding executed between the two States, in which States of Uttar Pradesh, Rajasthan and Himachal Pradesh are also parties. The Apex Court, in one of the proceedings and the Contempt Petition Nos. 111 and 118 of 1995, on 29.2.1996, observed as under:-

> “Delhi shall continue to get as much water for domestic use from Haryana through river Jamuna which can be consumed and filled in the two water reservoirs and treatment plants at Wazirabad and Hyderpur. Boith the Wazirabad and Hyderpur

reservoirs shall remain full to their capacity from the water supplied by Haryana through river Jamuna. We direct the State of Haryana through all its officers who are party to these proceedings and who have filed affidavits befor eus not to obstruct the supply of water to Delhi as directed by us at any time. This order of ours is not dependent on the MOU mentioned above or any other proceedings which may be initiated under any other law between the parties.

We, therefore, close the proceedings by requiring Haryana to make available the aforesaid quantity of water to Delhi through out the year. Let it be made clear that any violation of this direction would be viewed seriously and the guilty persons would be dealt with appropriately. This order of ours would bind not only the parties to this proceeding, but also the upper Jamuna River Board."

Besides the pressure to maintain supply to the State of Delhi from the water of river Yamuna, the State itself being confronted with acute shortage of water which was one of the primary objectives which prompted the decision to construct the canal in the shape of Hansi-Butana Link Canal to carry about 0.80 M.A.F. water to cater the needs of the southern districts of Haryana.

The official record is a testimony to the deliberations of the State and its functionaries regarding the pressing urgency of the project. In every acquisition, there is always a need, but there is a difference between need and a pressing need so as to warrant the invocation of the urgency

provisions.

The State, in order to meet the avowed objective of providing water to the millions of people and its parched areas, took a policy decision on 7.3.2005 and after getting the technical evaluation and necessary inputs, approved the project on 28.7.2005. The reason to acquire the land on urgent basis was the decision of the government to accord high priority to the project. The Chief Engineer, B.W.S. sent the following note to Engineer-in-Chief, Irrigation Department, Haryana for approval:-

> "This project has high priority of the Government. The land to be acquired is situated/ located in the Districts of Kaithal, Karnal and Jind. to avoid delay in the proceedings of land acquisition, it is essential that the DROs of these districts undertake this job on priority. He recommended that the government may be requested to issue necessary directions in this regard to the Deputy Commissioners of these Districts."

This urgency leading to dispensing of enquiry under Section 5-A of the 1894 Act was also reflected in the notifications issued by the Government of Haryana on 18.8.2005/23.8.2005 and 13.9.2005.

We are, therefore, convinced that the decision to acquire the land by invoking the urgency provisions of law was necessitated by the top priority accorded by the Government to the project of taking the water to the lesser irrigated areas. A project of such magnitude has to be carried out on urgent basis as even minor delay can lead to massive out-flow of funds from the State Exchequer in the wake of escalation of costs. We are also convinced that it is a case where the public policy and the public interest

have converged to achieve the betterment of millions.

It is a settled principle of law that the State can acquire land for a public purpose and it is also the subjective domain of the State to come to a conclusion about the land which is to be acquired, whether the urgency clause is to be invoked or not based on cogent reasons which go into the making of such a decision. The State being a welfare State has to encompass the interest of all its subjects and necessarily has to address their concerns. When confronted with such a situation in the facts of the present cases, the State has taken a momentous decision to execute the project of such a magnitude which, to our minds, is spurred on with a sole public purpose in mind.

In Narayan Govind Gavate's case (supra); Deepak Bhardwaj's case (supra); Hindustan Petroleum Corp. Ltd.'s case (supra) and Gurdial Singh's case (supra) relied upon by the learned counsel for the petitioners, it has, indeed, been held that the need to dispense with the enquiry under Section 5-A of the 1894 Act has to be a conscious decision by the State by properly applying its mind and that Section 5-A is not an empty formality but a valuable right conferred upon the landowners for getting their objections heard.

There is no doubt regarding the aforesaid proposition of law, but, as discussed above, we are convinced that the State of Haryana and its functionaries had applied their mind to the facts and keeping in view the acute urgency of providing irrigation and drinking water to the needy districts, the course adopted by it to achieve the object of acquisition and the resultant project is not tainted, but is justifiable.

Section 5-A of the 1894 Act , indeed, is a valuable right which accrues to a landowner and failure to comply with the provisions thereof would result in serious jeopardy as far as the rights of the landowners are concerned, but, in view of the urgency and public purpose involved, the Legislature, in its wisdom, has also stated that the same can be dispensed with.

The notifications issued by the State showing its intent to acquire the land on emergent basis cannot be tinkered with lightly. Mere allegation of being deprived of right to file objections will not render the acquisition proceedings void unless some prejudice is shown, especially if the notifications of the State are not vague and there is an exact purpose of acquisition which has been made explicit because it has a sovereign power to exercise right of eminent domain. The power to acquire the land by the State to achieve a public purpose emerges from the right of such eminent domain.

The Supreme Court in Sharda Devi Versus State of Bihar, (2003) 3 S.C.C. 128 observed as under:-

> "The power to acquire by the State the land owned by its subjects hails from the right of eminent domain vesting in the State which is essentially an attribute of sovereign power of the State. So long as the public purpose subsists, the exercise of the power by the State to acquire the land of its subjects without regard to the wishes or willingness of the owner or person interested in the land cannot be questioned. The State does not acquire its own land for it is futile to exercise the power of

eminent domain for acquiring rights in the land, which already vests in the State. It would be absurdity to comprehend the provisions of the Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. In other words, the land owned by the State on which there are no private rights or encumbrances is beyond the purview of the provisions of the Land Acquisition Act."

In First Land Acquisition Collector and others Versus Nirodhi Prakash Gangoli and another, AIR 2002 S.C. 1314, the Apex Court made the following observations:-

"When the Govt. takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under S.17(1) and (4) of the Act, and issues Notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the concerned authorities. If an order invoking power under S.17(4) is assailed, the Courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind. Any post notification delay subsequent to

the decision of the State Govt. dispensing with an enquiry under S.5(A) by invoking powers under S.17(1) of the Act would not invalidate the decision itself specially when no mala fides on the part of the government or its officers are alleged. Opinion of the State Govt. can be challenged in a Court of law if it could be shown that the State Gov. never applied its mind to the matter or that action of the State Gov. is mala fide. Though the satisfaction under S.17(4) is a subjective one and is not open to challenge before a Court of law, except for the grounds already indicated, but the said satisfaction must be of the Appropriate Government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Govt. that there was urgency even though cannot be conclusive but is entitled to great weight."

We, therefore, conclude that Section 17 of the 1894 Act confers extra-ordinary powers on the appropriate Government under which it can dispense with the normal procedure laid down under Section 5-A in exceptional cases of urgency. Such powers cannot be lightly resorted to except in the case of real urgency which enables the government to take immediate possession of the land proposed to be acquired for a public purpose. Such urgency must be reflected from the subjective satisfaction of the concerned authorities keeping in mind the nature of public purpose, the real urgency and the demands of the situation.

Much was sought to be said about the absence of public purpose. We are constrained to observe that the definition of `public

purpose' has travelled a long distance over a period of time. Like shifting sands, it has not remained static. There has to be a harmonious construction of the needs of the public and the policies of the State to enhance and achieve economic, social and over-all development. What is the public purpose is also the satisfaction of the State as it is its duty to undertake development works for the benefit of the society. This is the reason why public purpose constantly changes with the needs of the State and the society and like time never remains static. The action of the State of Haryana, therefore, has to be seen to be forming an umbilical cord between the public policy and the avowed public interest.

In Ramniklal N.Bhutta and another Versus State of Maharashtra and others, 1997(1) S.C.C. 134, their Lordships of the Supreme Court held as under:-

> "Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea,Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in direct

need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/ injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 – indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition

> was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say."

In so far as the challenge made on the project being technically feasible or not, we are of the opinion that the Court neither has the expertise nor the technical know-how to evaluate the contentions raised by the petitioners on this aspect of the matter. It has repeatedly been held by the Apex Court that the Courts cannot substitute their opinion where the decision making involves technical aspects of the matter.

In Balco Employees' Union (Regd.) Versus Union of India and others, (2002) 2 S.C.C. 333, their Lordships held as follows:-

> "In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."

Similarly, in Federation of Railway Officers Association and

others Versus Union of India, (2003) 4 S.C.C. 289, it was observed as under:-

> "Judicial review of a policy evolved by the Government is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere in such matters."

On the similar ground, we have already dismissed C.W.P.No.11095 of 2005 filed by Gurbant Singh Punnia by holding that the Court cannot look into the technical feasibility of such projects.

In two of the writ petitions, namely, C.W.P.Nos. 19676 of 2005 and 13691 of 2006, a specific argument argument has been raised that the project of building the canal was embarked upon without taking necessary clearance from the Central Government and particularly from Central Water Commission, as it is the requirement of the Environment Protection Act,1986 and the notification dated 27.1.1994.

The State of Haryana has produced before us letter dated 1.9.2006 by which necessary clearance has been granted to the project by the Ministry of Environment and Forests, Government of India, subject to various conditions which are to be complied with in due course of time.

This, by itself, shows that steps have been taken by the State of Haryana to address the environmental concerns and to comply with the mandate of the law and the instructions. It would be up to the respective governments to ensure the compliance of the conditions invocation of which it has made by virtue of letter dated 1.9.2006.

The contention of the learned counsel for the petitioners that the environment and forests would be at risk on account of completion of the project, is also belied from the fact that nothing has been shown that the project is likely to affect the forest land or is likely to damage the environment. Further, as noticed earlier, the project is apparently going to benefit millions of people, who are starved of water.

The Apex Court, while dealing with the construction of Narmada Dam in Narmada Bachao Andolan's case (supra), observed in paragraphs 236, 238, 239, 240, 242 and 243, as under:-

> "236.Furthermore, environmental concern has not only to be of the area which is going to be submerged but also its surrounding area. The impact on environment should be seen in relation to the project as a whole. While an area of land will submerge but the construction of the dam will result in multifold improvement in the environment of the areas where the canal waters will reach. Apart from bringing drinking water within easy reach the supply of water to Rajasthan will also help in checking the advancement of the Thar Desert. Human habitation will increase there which, in turn, will help in protecting the so far porous border with Pakistan.

238. Conflicting rights had to be considered. If for one set of people namely those of Gujarat, there was only one solution, namely, construction of a dam, the same would have an adverse effect on another set of people whose houses and agricultural land would be submerged in water. It is because of this conflicting interest that considerable time was taken before the project was finally cleared in 1987. Perhaps the need for giving the green signal was that while for the people of Gujarat, there was no other solution but to provide them with water from the Narmada, the hardships of the oustees from Madhya Pradesh could be mitigated by by providing them with alternative lands, sites and compensation. In governance of the State, such decisions have to be taken where there are conflicting interest. When a decision is taken by the Government after due consideration and full application of mind, the court is not to sit in appeal over such decision.

239. Since long the people of India have been deriving the benefits of the river valley projects. At the time of independence, foodgrain was being imported into India but with the passage of time and the construction of more dams, the position has been reversed. The large-scale river valley projects per se all over the country have made India more than self-sufficient in food. Famines which used to occur have now become a thing of the past. Considering the benefits which have been reaped by the people all over India with the

construction of dams, the Government cannot be faulted with deciding to construct the high dam on River Narmada with a view to provide water not only to the scarcity areas of Gujarat but also to the small areas of the State of Rajasthan where shortage of water has been there since time immemorial.

240. In the case of projects of national importance where the Union of India and/ or more than one State(s) are involved and the project would benefit a large section of the society and there is evidence to show that the said project had been contemplated and considered over a period of time at the highest level of the States and the Union of India and more so when the project is evaluated and approval granted by the Planning Commission, then there should be no occasion for any court carrying out any review of the same or directing its review by any outside or "independent" agency or body. In a democratic set-up, it is for the elected Government to decide what project should be undertaken for the benefit of the people. Once such a decision had been taken then unless and until it can be proved or shown that there is a blatant illegality in the undertaking of the project or in its execution, the court ought not to interfere with the execution of the project.

242. The loss of forest because of any activity is undoubtedly harmful. Without going into the question as to whether the loss of forest due to river valley project because of submergence is negligible, compared to deforestation due to other reasons like

cutting of trees for fuel, it is true that large dams cause submergence leading to loss of forest areas. But it cannot be ignored and it is important to note that these large dams also cause conversion of wasteland into agricultural land and make the area greener. Large dams can also become instruments in improving the environment, as has been the case of western Rajasthan, which transformed into a green area because of Indira Gandhi Canal which draws water from Bhakra Nangal Dam. This project not only allows the farmers to grow crops in deserts but also checks the spread of Thar Desert in the adjoining areas of Punjab and Haryana.

243. The environmental and ecological consideration must, of course, be given due consideration but with proper channelisation of developmental activities ecology and environment can be enhanced. For example, Periyar Dam Reservoir has become an elephant sanctuary with thick green forests all around while at the same time it wiped out famines that used to haunt the district of Madurai in Tamil Nadu before its construction. Similarly Krishnaraja Sagar Dam which has turned Mandya District which was once covered with shrub forests with wild beasts into a prosperous one with green paddy and surgarcane fields all around."

In view of the law laid down by the Supreme Court in the aforementioned case,it can safely be held that if the benefits of a project out-way the damage, if any, caused to the environment, then needless to say that

such a project cannot be scuttled on the altar of protection of environment.

Before parting, we, however, feel that it is important to unmask the petitioners, who have donned the cloak of public interest to raise such issues, which have only laid bare the fangs which do not belong to the innocent face of a farmer, but to some one else; and the petitions, especially C.W.P.No.19676 of 2005 are a result of an ingenuous mind with a purpose other than a public purpose. When viewed from the prism of the tests laid down by the Apex Court for a public interest litigation, we find the essential colours missing from the spectrum.

We are also of the view that the petitioners, who have already accepted the compensation, have no right to maintain their challenge any more as they have consciously acquiesced to the process of acquisition. The possession of the land having been taken and the project having gone deeper and farther towards its goal of completion, disentitle the petitioners to lay any further challenge to the proceedings. In Narinjan Singh's case (supra), Ashok Kumar's case (supra) and Shah Hyder Beig's case (supra), it has been held by this Court and the Supreme Court that once the award is passed and compensation accepted, the acquisition is complete for all intents and purposes and the possession vests in the State.

On the basis of the above discussion, we find no reason to accept the prayers made by the petitioners and consequently, dismiss the writ petitions.

(Vijender Jain)
Chief Justice

July 23,2007 **(Mahesh Grover)**

....

“SCM” **Judge**